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JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. ~~1965~~ 1316
~~1966~~

RICHARD H. M. SWANN, and
MARTIN BRATERMAN, Supervisor of Election,
Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

DAVID POPPER,
Attorney for Petitioners,
John A. Davis, Albert A. Hartman
and John J. O'Keeffe,
7520 Red Road
South Miami, Florida

IN THE

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No. _____

RICHARD H. M. SWANN, and
MARTIN BRATERMAN, Supervisor of Election,
Dade County, Florida,

Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

COME NOW, JOHN A. DAVIS, ALBERT A. HARTMAN, and JOHN J. O'KEEFFE pursuant to Supreme Court Rule 42 (3) and respectfully move the Court for leave to file a Brief of Amicus Curiae in the above entitled cause and for such say:

1. That consent to file a brief of Amicus Curiae in this cause was refused your Petitioners by Appellants,

RICHARD H. M. SWANN, and MARTIN BRATERMAN, Supervisor of Election, Dade County, Florida, one of the Defendants below. Refusal to grant consent is further attested to by a sworn affidavit attached hereto and by reference made a part hereof as Exhibit "A".

2. The nature of the Petitioners interest in this appeal is as follows: JOHN A. DAVIS is a citizen and resident of Monroe County, Florida, and a member of the Republican Party and a registered voter. ALBERT A. HARTMAN is a citizen and a resident of Dade County, Florida, a member of the Republican Party and a registered voter. JOHN J. O'KEEFFE is a citizen and resident of Monroe County, Florida, a member of the Democratic Party and a registered voter. That House Bill 17-X as enacted by the Florida Legislature in March 1966, and approved by a three judge District Court in the United States District Court for the Southern District of Florida on March 18, 1966, deprives them of equal protection of the law as set forth and guaranteed them under the 14th Amendment to the United States Constitution.

It is further submitted that House Bill 17-X does not meet the requirements of this Court with respect to its rule of One Man — One Vote as set forth in the case of **Reynolds v. Sims** (1964) 377 US 533. In **Fortson v. Dorsey** 379 US 433 85 Supreme Court 498, this Court stated:

> "We treat the question as presented and our opinion is not to be understood to say that in all instances or under all circumstances such a system as Georgia has will comport with the dic-

tates of the Equal Protection Clause. It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated, it will be time enough to consider whether the system still passes constitutional muster..."

3. That JOHN A. DAVIS and ALBERT A. HARTMAN, as members of the Republican Party are being discriminated against and deprived of their rights as electors for the following reason. That predominant Republican voting areas will be disenfranchized from their choice of representation.

4. That JOHN J. O'KEEFFE, as a member of the Democratic Party and voter in one of the smaller counties, will have his voting powers effectively diluted.

5. That your Petitioners believe that the above facts and its serious deprivation of their constitutional rights under House Bill 17-X as passed by the Florida Legislature and approved by the lower court will not be presented at all by the Appellants or Appellees to this Court. Such fact is easily discernable by Appellants' adamant refusal to grant their consent to the filing of a brief in this Court as Amicus Curiae by your Petitioners. That upon information and belief Appellants and Appellees are for the most part members of another political party whose political interests are opposed to those of your Petitioners. They cannot be expected to

set forth either in their briefs or in oral argument facts or questions of law which would result in a loss to them of the political advantage said Appellants have attained by the unconstitutional reapportionment act passed by the Florida Legislature.

That the question the Petitioners seek to draw the Court's attention to was specifically reserved by this Court in its decision in the case of **Fortson v. Dorsey**, supra, for future determination when presented.

6. The facts or questions of law which will not be presented by the Appellants or the Appellees are:

(a) Will a political group be disenfranchized by House Bill 17-X?

(b) Will votes of residents of small counties be diluted so as to deprive them of the **One Man — One Vote** rule as set forth in **Reynolds v. Sims** (1964) 377 US 533?

WHEREFORE, Petitioners pray this Honorable Court to enter an Order granting leave for your Petitioners to file a brief of Amicus Curiae in the above entitled cause.

DAVID POPPER, Attorney
for Petitioners
7520 Red Road
South Miami, Florida

AFFIDAVIT

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

BEFORE ME, the undersigned authority this day personally appeared STEWART D. ALLEN who, first being duly sworn deposes and says:

1. That he is a practicing attorney and counsellor at law duly licensed by the Supreme Court of the State of Florida; that he is one of the attorneys representing certain citizens and voters of Dade and Monroe County, Florida.

2. That on the 22nd day of March, 1966, said affiant requested of one, Daniel P. S. Paul, one of the attorneys for Appellant, Richard H. M. Swann, said Appellant's consent to the filing of a brief as Amicus Curiae by certain citizens and voters of Dade and Monroe County, Florida, in the case of Swann v. Adams, et al now pending on appeal in the United States Supreme Court. That consent to the filing of such a brief was refused by Daniel P. S. Paul.

3. That on the 29th day of March, 1966, one, Stuart Simon, Asst. County Attorney for Dade County, Florida, one of the attorneys for Appellant, Martin Braterman, Supervisor of Elections of Dade County, Florida, similarly refused consent to the filing of a brief of Amicus Curiae in the case of Swann vs. Adams, Et Al.

FURTHER AFFIANT SAYETH NAUGHT.

STEWART D. ALLEN

SWORN TO AND SUBSCRIBED before me this 25 day of April, 1966.

NORMA MARTINEZ
NOTARY PUBLIC

(SEAL)

My Commission Expires: February 22, 1970

EXHIBIT "A"

I, DAVID POPPER, Attorney for the Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this 25th day of April, 1966, I served copies of the foregoing Motion to the Supreme Court of the United States on the several parties thereto as follows:

1. On the Hon. TOM ADAMS, Secretary of the State of Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to the Hon. Earl Faircloth, Attorney General State of Florida, Tallahassee, Florida.

2. On RICHARD H. M. SWANN, one of the Appellants herein, by mailing a copy in a duly addressed envelope with first class postage prepaid to Paul & Sams, 1314 First National Bank Bldg., Miami, Florida.

3. On the Hon. MARTIN BRATERMAN, Super-

visor of Election, Dade County, Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to Thomas C. Britton, County Attorney, Dade County Courthouse, Miami, Florida.

4. On the Hon. E. L. GATES, Supervisor of Registration of Broward County, Florida by mailing a copy in a duly addressed envelope with first class postage prepaid to John U. Lloyd, Esq., County Attorney, Broward County Courthouse, Fort Lauderdale, Florida.

5. On the Hon. W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida, by mailing a copy in a duly addressed envelope with first class postage prepaid to Paul E. Sawyer, Esq., P. O. Box 571, Key West, Florida.

6. On the Amici Curiae and/or Intervenors by mailing a copy in a duly addressed envelope with first class postage prepaid to the following:

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